

Senate, No. 2047

[Senate, May 5, 2009– Text of the Senate amendment to the Senate Bill relative to mobilizing economic recovery in Massachusetts. (Senate, No. 2047)].



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

AN ACT MOBILIZING ECONOMIC RECOVERY IN MASSACHUSETTS.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to infuse the state economy with available federal funds, create jobs and provide economic relief to the people of the Commonwealth of Massachusetts in the present fiscal emergency, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Notwithstanding section 38C of chapter 7 of the General Laws, contracts for design
2 services which are funded in whole or in part by the American Recovery and Reinvestment Act
3 of 2009 shall be exempt from the jurisdiction of the designer selection board if the design fee
4 under the contract is less than \$25,000, or if the estimated construction cost of the project for
5 which the design services are required is less than \$250,000 or if the contract is otherwise
6 exempt under section 38C.

7 SECTION 2. Notwithstanding section 38D of chapter 7 of the General Laws, each contract for
8 designer services for a project which is funded in whole or in part by the American Recovery and
9 Reinvestment Act of 2009 and is subject to the jurisdiction of the board shall be publicly
10 advertised by the board either (i) within the COMPASS system, not less than 2 weeks before the

Senate, No. 2047

deadline for filing applications, and in the central register established under section 20A of chapter 9, not less than 1 week before the deadline for filing applications, or (ii) if the contract is not advertised within the COMPASS system, the contract shall be publicly advertised in the central register at least 2 weeks before this deadline. Every contract for design services for a project which is funded in whole or in part by the American Recovery and Reinvestment Act of 2009 and subject to section 38K of chapter 7 shall be publicly advertised under this section.

SECTION 3. Notwithstanding section 38H of chapter 7 of the General Laws, for contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, the certification required by paragraph (iv) of subsection (e) shall only apply to contracts which exceed \$25,000 or which are for the design of a building for which the budgeted or estimated construction costs exceed \$250,000.

SECTION 4. Notwithstanding section 38K of chapter 7, a contract for design services which is funded in whole or in part by the American Recovery and Reinvestment Act of 2009 and which would otherwise be subject to the requirements of section 38K shall not be subject to those requirements unless the project at issue is estimated to exceed \$250,000.

STREAMLINE DSB PROCESS

SECTION 5. Subsection (d) of section 38F of chapter 7 of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009. For those projects, the designer selection board may delegate its powers and duties under paragraph (b) of section 38D, paragraphs (c) and (d) of section 38E, and paragraphs (a) and (b) of sections 38G, 38H and 38I to panels of less than all the board members. A panel of no less than 6 members shall be required for selection of designers under this section, 4 of whom shall be architects or engineers provided there must be at least 1 architect and 1 engineer on that panel.

Senate, No. 2047

**INCREASE THE THRESHOLDS FOR DCAM TO DELEGATE TO PUBLIC
AGENCIES THE AUTHORITY TO CONTROL PROJECTS**

SECTION 6. Notwithstanding section 40B of chapter 7 of the General Laws, for projects which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, the commissioner of capital asset management and maintenance may, upon request of a state agency or building authority, delegate project control and supervision to that state agency or building authority over projects involving structural or mechanical work whose estimated cost is less than \$2,000,000 if the commissioner determines that the agency or authority has the ability to control and supervise such project. Except as otherwise provided in section 40B, any state agency or building authority shall control and supervise its own building projects when the estimated cost of such project is less than \$250,000, or if the project does not involve structural or mechanical work.

**MODIFY STUDY REQUIREMENTS FOR LARGER PROJECTS AND ELIMINATE
STUDY AND ENCUMBRANCE REQUIREMENTS FOR SMALL DESIGN PROJECTS**

SECTION 7. The second and third paragraphs of section 7K of chapter 29 of the General Laws shall not apply to projects which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, but in place thereof the following provision shall apply:-

No provider of design services for any building project for which a state agency is the using agency shall be selected by the designer selection board or by the administering agency in accordance with sections 30B through 30P, inclusive, of chapter 7, and no design services shall be performed for or by such administering agency for any building project for which the satisfactory completion of a study program is required before the design or construction of that

Senate, No. 2047

project, unless and until: (a) the study, program or where appropriate, both, have been satisfactorily completed to such extent that a contract for final design may be awarded in the discretion of the commissioner of capital asset management and maintenance; (b) the using agency certifies in writing to the commissioner of capital asset management and maintenance that the study, program, or where appropriate both, correspond to the current needs of that agency, including its current long term capital facilities development plan; and (c) the commissioner requests that one or more of the directors of the office of programming, office of project management, or office of facilities management review the study or program, or where appropriate, both, and the director or directors certify in writing to the commissioner that the study, program, or where appropriate both, reflect the using agency's needs as stated, that they provide an accurate estimate of the project requirements, cost and schedule, that the project can be accomplished within the appropriation or authorization for that project, and recommends proceeding with design, construction, or where appropriate, both.

This section shall not apply to maintenance or repair projects, as defined by section 39A of chapter 7, estimated to cost less than \$250,000, if the executive head of the agency administering the project certifies in writing that the design work is or shall be such as to specify a project that can be accomplished and that there are funds available to pay for the design services.

SECTION 8. Section 26A of chapter 29 of the General Laws shall not apply to maintenance or repair projects, as defined by section 39A of chapter 7, which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, and are estimated to cost less than \$250,000, if the executive head of the agency administering the project certifies in writing that the design work is or shall be such as to specify a project that can be accomplished, and that there are funds available to pay for the design services.

Senate, No. 2047

INCREASE THE THRESHOLD FOR SMALL BUILDING PROJECT

PROCUREMENTS

SECTION 9. For contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, section 39M of chapter 30 of the General Law shall only apply if the contract is estimated to cost more than \$50,000 but not more than \$100,000.

INCREASE THE THRESHOLD FOR PROJECTS REQUIRING PAYMENT BONDS TO \$25,000

SECTION 10. Notwithstanding section 29 of chapter 149 of the General Laws, contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009 shall only be subject to the requirements of section 29 if the amount of the contract is more than \$25,000.

REVISE ADVERTISING AND BIDDING THRESHOLDS FOR SMALL PROJECTS

SECTION 11. Subsection (2) of section 44A of chapter 149 of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, but in place thereof the following provision shall apply:-

(2)(a) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost less than \$10,000, and where the overall project is also estimated to cost less than \$10,000, shall be obtained through the exercise of sound business practices. The public agency shall make and keep a record of each such contract solicitation. The record shall at a minimum include a written description of how the services were procured, and the name and address of the person from whom the services were

Senate, No. 2047

procured. Written price quotations submitted in accordance with this subsection shall not require certificates of eligibility, update statements or bid deposits. In no event shall public agencies solicit price quotations from persons if to do so would violate chapter 268A of the General Laws.

(b) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost not less than \$10,000, but not more than \$50,000, and where the overall project is also estimated to cost not more than \$50,000, shall be awarded to the responsible person offering to perform the contract at the lowest price quotation; provided however, that the public agency shall seek written price quotations from no fewer than 3 persons customarily providing the work for which the contract is being made available. When seeking written quotations the public agency shall make and keep a record of the names and addresses of all persons from whom price quotations were sought, the names of the persons submitting price quotations, and the date and amount of each price quotation. Written price quotations submitted in accordance with this subsection shall not require certificates of eligibility, update statements or bid deposits. In no event shall public agencies solicit price quotations from persons if to do so would violate chapter 268A of the General Laws.

(c) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than \$50,000 but not more than \$100,000, except for a pumping station to be constructed as an integral part of a sewer construction or water construction project bid under section 39M of chapter 30, shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids publicly opened and read in accordance with the procedure set forth in section 39M of chapter 30. The term "pumping station" as used in this section shall mean a building or other structure which houses solely pumps and appurtenant electrical and plumbing fixtures.

Senate, No. 2047

(d) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than \$100,000, except for a pumping station to be constructed as an integral part of a sewer construction or water construction project bid under section 39M of chapter 30, shall be awarded to the lowest responsible and eligible general bidder on the basis of competitive bids in accordance with the procedure set forth in sections 44A to 44H, inclusive.

(e) When the general court has approved the use of an alternative mode of procurement of construction for a project under section 7E of chapter 29, the awarding authority responsible for procuring construction services for the project shall follow the policies and procedures of this section and of sections 44B to 44H, inclusive, to the extent compatible with the mode of construction procurement selected.

(f) Notwithstanding paragraph (d), a public agency may undertake the procurement of modular buildings, in accordance with section 44E. A public agency may procure site work for modular buildings, including but not limited to, construction of foundations, installations, and attachment to external utilities, or any portion of site work, either in combination with the procurement of modular buildings pursuant to section 44E or on the basis of competitive bids pursuant to paragraph (d). Notwithstanding paragraph (d), a public agency may procure energy management services in accordance with sections 11C or 11I of chapter 25A and regulations promulgated under those sections.

**ELIMINATE NEWSPAPER AD REQUIREMENT AND ABBREVIATE CENTRAL
REGISTER ADVERTISING**

Senate, No. 2047

SECTION 12. Subsection (f) of section 44D1/2 of chapter 149 shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

(f) The public notice and solicitation required in subsection (d) shall be advertised in the central register under section 20A of chapter 9 and within the COMPASS system. The public notice and solicitation shall be given within the COMPASS system not less than 2 weeks before the deadline for submitting responses to the RFQ, and in the central register under section 20A of chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

SECTION 13. Subsection (f) of section 44D3/4 of chapter 149 of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

(f) The public notice and solicitation required in subsection (d) shall be advertised in the central register under section 20A of chapter 9 and within the COMPASS system. The public notice and solicitation shall be given within the COMPASS system not less than 2 weeks before the deadline for submitting responses to the RFQ, and in the central register under section 20A of chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

SECTION 14. Subsection (1) of section 44J of chapter 149 of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

(1) No public agency or authority of the commonwealth or any political subdivision thereof shall award any contract for which competitive bids are required under section 44A of this chapter or

Senate, No. 2047

section 39M of chapter 30, or for which competitive proposals are required under subsection (4) of section 44E of this chapter or section 11C of chapter 25A, unless a notice inviting bids or proposals therefor shall have been posted not less than 1 week before the time specified in the notice for the receipt of the bids or proposals in a conspicuous place in or near the offices of the awarding authority, and shall have remained posted until the time so specified, and unless the notice shall also have been advertised either within the COMPASS system, not less than 2 weeks prior to the time specified and in the central register published by the secretary of state under section 20A of chapter 9 not less than 1 week before the time specified for the receipt of the bids or proposals, or, if the notice is not advertised within the COMPASS system, the notice shall be advertised in the central register at least 2 weeks before the time specified. The notice shall also be published at such other times and in such other newspapers or trade periodicals as the commissioner of capital asset management and maintenance may require, having regard to the locality of the work involved.

SECTION 15. Subsection (e) of section 5 of chapter 149A of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

(e) The public notice and solicitation required in subsection (c) shall be advertised in the central register under section 20A of chapter 9, and within the COMPASS system. The public notice and solicitation shall be given within the COMPASS system not less than 2 weeks before the deadline for submitting responses to the RFQ, and in the central register under section 20A of chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

Senate, No. 2047

SECTION 16. Subsection (d) of section 8 of chapter 149A of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

(d) The public notice and solicitation required in subsection (c) shall be advertised in the central register under section 20A of chapter 9, and within the COMPASS system. The public notice and solicitation shall be given within the COMPASS system not less than 2 weeks before the deadline for submitting responses to the RFQ, and in the central register under section 20A of chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

SECTION 17. Subsection (b) of section 17 of chapter 149A of the General Laws shall not apply to contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

(b) The public notice and solicitation required in subsection (a) shall be advertised either within the COMPASS system not less than 2 weeks before the deadline for submitting the letters of interest and in the central register established under section 20A of chapter 9 not less than 1 week before the deadline, or if the public notice and solicitation are not given within the COMPASS system, the public notice and solicitation shall be advertised in the central register published by the secretary of state under section 20A of chapter 9 not less than 2 weeks before the deadline for submitting the letters of interest.

**STREAMLINE SELECTION PROCESS WHEN UNREASONABLY HIGH SUB-BIDS
ARE RECEIVED WITHOUT COMPETITION**

Senate, No. 2047

207 SECTION 18. Subdivision (a) of subsection 4 of section 44F of chapter 149 of the General
208 Laws shall not apply to contracts which are funded in whole or in part by the American
209 Recovery and Reinvestment Act of 2009, but in place thereof the following subdivision shall
210 apply:-

211 (a)(1) In inviting general bids and sub-bids the awarding authority shall reserve the right to reject
212 any or all bids if it is in the public interest to do so. In inviting sub-bids in connection with a
213 contract, the awarding authority shall reserve the right to reject any sub-bid on any sub-trade if it
214 determines that the sub-bidder is not a person competent to perform the work as specified, or if
215 less than 3 sub-bids were received, which are not restricted to the use of 1 or more general
216 bidders, and the prices are not reasonable for acceptance without further competition.

217 (2) If no sub-bid is filed for a sub-trade designated in the general bid form, or if the only sub-bids
218 which are filed are restricted to the use of 1 or more general bidders, the awarding authority may
219 state, in an addendum issued with the list of sub-bidders required by clause (3), that the general
220 bidder shall include in the cost of his own work an amount to cover all the work required for any
221 such sub-trade. The general contractor shall cause the work covered by the sub-trade to be done
222 by a qualified and responsible sub-contractor, subject to the written approval of the awarding
223 authority. If the awarding authority determines that any sub-contractor chosen by the general
224 contractor under this section is not qualified or responsible, the general contractor shall obtain
225 another sub-contractor who is satisfactory to the awarding authority with no adjustment in the
226 general contractor's price.

227 (3) If a rejection of all sub-bids for such a sub-trade occurs under this section, the awarding
228 authority shall state, in an addendum issued with the list of sub-bidders, the amount to be

Senate, No. 2047

included by a general bidder on the general bid form for such sub-trade; and without in any way affecting other sub-bidders in other sub-trades who have conformed to the prescribed bidding procedure, new sub-bids for such sub-trade shall be requested by written invitation to 3 or more qualified sub-bidders, including any that had previously submitted bids, and the sub-bids shall be publicly opened and read by the awarding authority at a time and place to be specified in the invitation. The general contractor shall cause the work covered by the sub-trade to be done by the lowest responsible and eligible sub-bidder against whose standing and ability the general contractor makes no objection or, if there is no sub-bidder, by the sub-contractor against whose standing and ability the general contractor and awarding authority make no objection, and for a sum upon which the general contractor and the awarding authority may agree. The contract price shall be adjusted by the difference between the sub-contract sum and the amount stated in the addendum. The general bidder shall include in the cost of his own work on the general bid form all expenses and profits on account of such adjustments.

(4) If after new sub-bids for a sub-trade are requested by written invitation under the preceding paragraph, the awarding authority still does not receive any sub-bids that are unrestricted to the use of 1 or more general bidders and are reasonable for acceptance based upon the estimated cost for the work of that sub-trade, the awarding authority may assign the work to the general contractor if the awarding authority first confirms that its estimate for the cost of the work of that sub-trade is accurate. The general contractor shall cause the work covered by the sub-trade to be done by the sub-contractor against whose standing and ability the general contractor and awarding authority make no objection and for a sum upon which the general contractor and the awarding authority agree. The contract price shall be adjusted by the difference between the sub-

Senate, No. 2047

contract sum and the amount stated in the addendum. The general bidder shall include in the cost of his own work on the general bid form all expenses and profits on account of such adjustments.

ESTABLISH A STANDING LIST OF PREQUALIFIED CONSTRUCTION MANAGER AT RISK FIRMS

SECTION 19. Notwithstanding section 5 of chapter 149A of the General Laws, for contracts which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, the following procedure shall apply:-

A. (1) The division of capital asset management shall annually undertake a prequalification process set forth in this section to provide a standing list of prequalified construction management at risk firms to be used by the division in requesting proposals pursuant to Subsection B for construction management at risk services for specific projects to be determined at a later date. Public awarding authorities other than the division have the option to use the standing list and related procedures upon application to and approval by the inspector general. Each contract between a construction management at risk firm and the division or other public awarding authority shall be secured by a performance and payment bond in the full sum of the guaranteed maximum price by a surety company licensed to do business in the commonwealth and whose name appears on the United States Treasury Department Circular 570.

(2) Firms included on the division's standing list of prequalified construction management at risk firms shall be prequalified for a period of 1 year from the date of issuance of the standing list by the division. Upon issuance of the standing list, the division shall publish the standing list of prequalified construction manager at risk firms in the central register, the COMPASS system, and the division's website. The division shall re-advertise and solicit applications quarterly

Senate, No. 2047

273 through the request for qualifications process or RFQ process provided for herein to keep the
274 statewide standing list current.

275 (3) Before issuing a RFQ, the division shall establish a prequalification committee for the
276 purpose of reviewing and evaluating responses submitted to the RFQ issued pursuant to
277 paragraph (4). The prequalification committee shall be comprised of at least 1 registered
278 architect or 1 registered professional engineer on the division's staff who has at least 5 years
279 experience in the construction and supervision of construction of buildings or, if not registered as
280 an architect or professional engineer, who has at least 7 years experience in the construction and
281 supervision of construction of buildings, and at least 2 other representatives from the division as
282 designated by the commissioner.

283 (4) The selection process for the annual prequalification of the division's standing list of
284 construction manager at risk firms shall begin once the division gives public notice of the
285 solicitation and requests responses to an RFQ from construction management at risk firms. The
286 public notice and RFQ shall include: (a) a statement indicating that the RFQ is not for a specific
287 project, but will be used to prequalify construction management at risk firms for inclusion on the
288 division's annual standing list and that only those construction manager at risk firms included on
289 the standing list shall be invited to submit proposals in response to requests for proposals issued
290 pursuant to subsection B; (b) the time and date for receipt of responses to the RFQ, the address
291 of the office to which the responses are to be delivered, and the timeframe in which the public
292 agency will respond to the responses; (c) a description of the experience that will be required for
293 construction manager at risk firms to be included on the division's standing list, which shall
294 include a minimum of 3 public or private construction manager at risk projects during the past 10
295 years; (d) the evaluation procedure and criteria under paragraph (7), including any rating system;

Senate, No. 2047

(e) a general description of the scope of services that would be expected of a prequalified construction manager firm during the pre-design, pre-construction and construction phases of a construction manager at risk project; (f) the anticipated schedule for the selection process of construction manager at risk firms to be included on the division's standing list; and (g) a prohibition against any unauthorized communication or contact with the public agency outside of official pre-proposal meetings.

(5) The division shall require interested construction management at risk firms to submit a statement of qualifications in response to the RFQ issued pursuant to paragraph (4). The statement of qualifications shall include, at a minimum, the following: (a) a cover letter or executive summary detailing the key elements and factors that differentiate the firm from other responders; (b) completion of a qualifications application similar in form to AIA Document A305, 1986 edition, listing general business information and financial capacity; (c) a list of lawsuits and arbitrations to which the firm is a party in regard to construction contracts within the last 3 years, including a list of all convictions or fines for violations of state or federal law; (d) submission of an organization chart with specific information on key project personnel or consultants; (e) submission of an audited financial statement for the most recent fiscal year and a letter from the surety company of the firm confirming the ability to provide performance and payment bonds for the building project under consideration, but, the financial information submitted shall remain confidential and shall not be a public record to the fullest extent permissible under the law; (f) submission of information on the firm's safety record including its workers' compensation experience modifier for the prior 3 years; (g) submission of information on and evidence of the firm's compliance record with respect to minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals, if applicable; (h)

Senate, No. 2047

319 submission of information regarding the firm's experience on construction manager at risk
320 projects including references from the owners and architects of the building projects; (i)
321 submission of information on any projects where the firm was terminated, failed to complete the
322 work, or paid liquidated damages; (j) a certificate of eligibility issued by the division under
323 section 44D of chapter 149, showing the construction manager at risk firm's capacity rating, and
324 an update statement; and (k) any other relevant information that the division determines
325 desirable. The statement of qualifications shall be signed under pains and penalties of perjury.

326 (6) The public notice and solicitation required in paragraph (4) shall be advertised in the central
327 register under section 20A of chapter 9, and within the COMPASS system. The public notice
328 and solicitation shall be given within the COMPASS system not less than 2 weeks before the
329 deadline for submitting responses to the RFQ, and in the central register under section 20A of
330 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

331 (7) Upon receipt of the statement of qualifications submitted by construction management at risk
332 firms, the prequalification committee established under subsection (c) shall evaluate each
333 statement of qualifications using the criteria provided in the RFQ. Only construction
334 management at risk firms achieving an acceptable rating as defined under clause (c) of paragraph
335 (4) will be selected for inclusion on the standing list.

336 B. (1) Before issuing a request for proposals, in this section referred to as RFP, the division or
337 any other public awarding authority authorized under subsection A shall establish a selection
338 committee for the purpose of reviewing and evaluating responses submitted to the RFP issued
339 under subsection (2). The selection committee shall be comprised of 1 representative of the

Senate, No. 2047

designer, the owner's project manager, and at least 2 representatives of the division or other public awarding authority authorized under subsection A.

(2) The division or any other public awarding authority authorized by subsection A shall issue an RFP to all construction management at risk firms that have been prequalified by the division in accordance with subsection A and who have a division certificate of eligibility indicating sufficient single project and aggregate limits for the project. RFPs issued under this section shall follow the procedure set forth in paragraphs (b) through (e) of section 6 of chapter 149A of the General Laws.

CONDENSED PREQUALIFICATION PROCESS

SECTION 20. (a) For contracts subject to the prequalification requirements set forth in section 44D½ of chapter 149 of the General Laws which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (the federal act), an awarding authority shall have the option to use the condensed prequalification process for general contractors described in this section in lieu of the full prequalification process set forth in section 44D½. The purpose of the condensed prequalification process is to allow awarding authorities an opportunity to expedite the prequalification process provided in section 44D½ in order to most efficiently meet the specified goals and time parameters set forth in the federal act. All of the requirements of the full prequalification process set forth in section 44D½ shall be required under the condensed prequalification process unless specifically modified in this section.

(b) Where an awarding authority opts to use the condensed prequalification process, the requirements for public notice of the building project and solicitation of responses to the RFQ

Senate, No. 2047

from interested general contractors shall include all items set forth in clauses (1) through (8) of subsection (d) of section 44D½ but shall also include the following additional statements:

(1) a statement that the project is funded in whole or in part under the federal act and shall use the condensed prequalification process.

(2) a statement that the evaluation procedure and the criteria for the prequalification of interested general contractors shall include evaluation of all the criteria set forth in subsection (e) of section 44D½ but, in order to avoid duplication and promote the expeditious commencement of projects under the federal act and without sacrificing the importance of the prequalification process, for certain of the evaluation categories and subcategories specifically identified in subsection (e), the prequalification committee shall evaluate interested general contractors based on a review of the information contained in the division of capital asset management and maintenance certification files, including but not limited to the project evaluations required by subsection (7) of section 44D of the General Laws and the update statements required by clause (ii) of subdivision (4) of subsection (e) of section 44D½ to be submitted by interested general contractors. The prequalification committee shall exercise due diligence in checking appropriate references.

(c) The RFQ and evaluation criteria for the condensed prequalification process shall include all criteria set forth in subsection (e) of section 44D½ but shall not include the total or minimum point allocations for the evaluation categories and subcategories designated therein. In addition, in the interest of expediting the prequalification of general contractors for contracts funded in whole or in part under the federal act but not sacrificing the prequalification process, where certain of the evaluation subcategories specifically identified in this section require similar reporting by contractors in connection with the certification process set forth in section 44D and

Senate, No. 2047

the information contained in the required update statements submitted by interested general contractors, an awarding authority issuing an RFQ under this condensed prequalification process shall maintain as part of the project record the written certification by the prequalification committee that it has evaluated interested general contractors based on a review of both the information contained in the certification files, including but not limited to the project evaluations required by subsection (7) of section 44D, and the current update statements submitted by interested general contractors and that it has exercised due diligence in checking appropriate references.

(d) Where an awarding authority opts to use the condensed prequalification process, the review of the terminations, legal proceedings, safety record and compliance record provided in clauses (iv) through (vii) of subdivision (1) of subsection (e) of section 44D^{1/2}, and the review of credit references and public project record under clauses (ii) and (iii) of subdivision (2) of subsection (e) of section 44D^{1/2}, and the review of audited financial statements under clause (i) of subdivision (3) of subsection (e) of section 44D^{1/2} shall be satisfied by a requirement that the prequalification committee evaluate both the information contained in the division of capital asset management and maintenance certification files, including but not limited to the project evaluations required by subsection (7) of section 44D, and the current update statements submitted by interested general contractors and by a requirement that the prequalification committee exercise due diligence in checking appropriate references. The prequalification committee shall further be required to certify in writing that it has met these requirements, and the certification shall be maintained by the awarding authority in the project record.

(e) Notwithstanding subsection (f) of section 44D^{1/2}, the public notice requirements for the condensed prequalification process shall be for the RFQ to be advertised in the central register

Senate, No. 2047

for not less than 1 week and in the COMPASS system for not less than 2 weeks. In addition, these projects shall be advertised in the central website to be established for all projects in the commonwealth funded in whole or in part under the federal act and in accordance with any requirements contained in the federal act.

(f) Where an awarding authority opts to use the condensed prequalification process in lieu of the evaluation requirements set forth in subsection (h) of section 44D½, the prequalification committee shall evaluate each statement of qualifications based on the criteria provided in the RFQ, the information contained in the division of capital asset management and maintenance certification files, including but not limited to the project evaluations required by subsection (7) of section 44D and the current update statements submitted by interested general contractors. The prequalification committee shall exercise due diligence in checking appropriate references. As provided in subsection (c) the total and minimum point allocations designated in subsection (e) of 44D½ shall not be included in the RFQ and shall not be used in the evaluation of interested general contractors where the condensed prequalification process is utilized. The evaluation of interested general contractors shall be based on the evaluation criteria set forth in this subsection and conducted within the discretion of the prequalification committee, providing that the prequalification committee evaluates each interested general contractor on the same fair and equitable basis. A general contractor's score shall be made available to the general contractor upon request. The decision of the prequalification committee shall be final and shall not be subject to appeal except on grounds of arbitrariness, capriciousness, fraud or collusion.

(g) Where an awarding authority opts to use the condensed prequalification process, in lieu of the requirements for the re-issuance of the RFQ set forth in subsection (i) of section 44D½, if the awarding authority prequalifies fewer than 3 general contractors to submit bids, the awarding

Senate, No. 2047

429 authority may invite general bids under sections 44B to 44E, inclusive, or, if the awarding
430 authority prequalifies at least 2 general contractors, then the awarding authority may invite bids
431 from the 2 prequalified general contractors.

432 (h) Procedures shall be adopted by the commissioner of capital asset management and
433 maintenance to implement this section and to ensure that the condensed prequalification process
434 is sufficient, fair and consistent.

435 SECTION 21. (a) For contracts subject to the prequalification requirements set forth in section
436 44D³/₄ of chapter 149 of the General Laws which are funded in whole or in part by the American
437 Recovery and Reinvestment Act of 2009 (the federal act), an awarding authority shall have the
438 option to use the condensed prequalification process for subcontractors described in this section
439 in lieu of the full prequalification process set forth in section 44D³/₄. The purpose of the
440 condensed prequalification process is to allow awarding authorities an opportunity to expedite
441 the prequalification process provided in section 44D³/₄ in order to most efficiently meet the
442 specified goals and time parameters set forth in the federal act. All of the requirements of the
443 full prequalification process set forth in section 44D³/₄ shall be required under the condensed
444 prequalification process unless specifically modified in this section.

445 (b) Where an awarding authority opts to use the condensed prequalification process, the
446 requirements for public notice of the building project and solicitation of responses to the RFQ
447 from interested subcontractors shall include all items set forth in clauses (1) through (8) of
448 subsection (d) of section 44D³/₄ but shall also require the following additional statements:

449 (1) a statement that the project is funded in whole or in part under the federal act and shall use
450 the condensed prequalification process.

Senate, No. 2047

(2) a statement that the evaluation procedure and the criteria for the prequalification of interested subcontractors shall include evaluation of all the criteria set forth in subsection (e) of section 44D¹/₂ but, in order to avoid duplication and promote the expeditious commencement of projects under the federal act and without sacrificing the importance of the prequalification process, for certain of the evaluation categories and subcategories specifically identified in subsection (e) of section 44D³/₄, the prequalification committee shall evaluate interested subcontractors based on a review of the information contained both in the division of capital asset management and maintenance certification files, including but not limited to the project evaluations required by subsection (7) of section 44D and the update statements required by clause (ii) of subdivision (4) of subsection (e) of section 44D³/₄ to be submitted by interested subcontractors. The prequalification committee shall exercise due diligence in checking appropriate references.

(c) The RFQ and evaluation criteria for the condensed prequalification process shall include all criteria set forth in subsection (e) of section 44D³/₄ but shall not include the total or minimum point allocations for the evaluation categories and subcategories designated therein. In addition, in the interest of expediting the prequalification of subcontractors for contracts funded in whole or in part under the federal act but not sacrificing the prequalification process, where certain of the evaluation subcategories specifically identified in this section require similar reporting by contractors in connection with the certification process set forth in section 44D and the information contained in the required update statements submitted by interested subcontractors, an awarding authority issuing an RFQ under this condensed prequalification process shall maintain as part of the project record the written certification by the prequalification committee that it has evaluated interested subcontractors based on a review of both the information contained in the certification files, including but not limited to the project evaluations required

Senate, No. 2047

by subsection (16) of section 44D, and the current update statements submitted by interested subcontractors and that it has exercised due diligence in checking appropriate references.

(d) Where an awarding authority opts to use the condensed prequalification process, the review of the terminations, legal proceedings and safety record provided in clauses (iv) through (vi) of subdivision (1) of subsection (e) of section 44D^{3/4}, and the review of credit references and public project record under clauses (ii) and (iii) of subdivision (2) of subsection (e) of section 44D^{3/4}, and the review of annual revenue under clause (i) of subdivision (3) of subsection (e) of section 44D^{3/4} shall be satisfied by a requirement that the prequalification committee evaluate both the information contained in the division of capital asset management and maintenance certification files, including but not limited to the project evaluations required by subsection (16) of section 44D, and the current update statements submitted by interested subcontractors and by a requirement that the prequalification committee exercise due diligence in checking appropriate references. The prequalification committee shall further be required to certify in writing that it has met these requirements, and the certification shall be maintained by the awarding authority in the project record.

(e) Where an awarding authority opts to use the condensed prequalification process, the “mandatory” requirements for the solicitation of and submission of a commitment letter for payment and performance bonds at 100 per cent of the estimated contract value from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570 shall be as set forth in subdivision (4) of subsection (e) of section 44D^{3/4}. In addition, it shall be mandatory for the awarding authority to solicit in the RFQ and an interested subcontractor to submit with its statement of qualifications a certificate of

Senate, No. 2047

eligibility for the subcontractor trade for which it is seeking to be prequalified, issued by the division of capital asset management and maintenance under section 44D.

(f) Notwithstanding subsection (f) of section 44D^{3/4}, the public notice requirements for the condensed prequalification process shall be for the RFQ to be advertised in the central register for not less than 1 week and in the COMPASS system for not less than 2 weeks. In addition, these projects shall be advertised in the central website to be established for all projects in the commonwealth funded in whole or in part under the federal act and in accordance with any requirements contained in the federal act.

(g) Where an awarding authority opts to use the condensed prequalification process in lieu of the evaluation requirements set forth in subdivision (h) of section 44D^{3/4}, the prequalification committee shall evaluate each statement of qualifications based on the criteria provided in the RFQ, the information contained in the division of capital asset management and maintenance certification files, including but not limited to the project evaluations required by subsection (16) of section 44D and the current update statement submitted by interested subcontractors. The prequalification committee shall exercise due diligence in checking appropriate references. As provided in subsection (c) the total and minimum point allocations designated in subsection (e) of 44D^{3/4} shall not be included in the RFQ and shall not be used in the evaluation of interested subcontractors where the condensed prequalification process is utilized. The evaluations of interested subcontractors shall be based on the evaluation criteria set forth in this subsection and conducted within the discretion of the prequalification committee, provided that the prequalification committee evaluates each interested subcontractor on the same fair and equitable basis. A subcontractor's score shall be made available to the subcontractor upon request. The

Senate, No. 2047

518 decision of the prequalification committee shall be final and shall not be subject to appeal except
519 on grounds of arbitrariness, capriciousness, fraud or collusion.

520 (h) Where an awarding authority opts to use the condensed prequalification process in lieu of
521 the requirements for the re-issuance of the RFQ set forth in subsection (i) of section 44D³/₄, if the
522 awarding authority prequalifies fewer than 3 subcontractors to submit bids, the awarding
523 authority may invite general bids under sections 44B to 44E, inclusive, or, if the awarding
524 authority prequalifies at least 2 subcontractors, then the awarding authority may invite bids from
525 the 2 prequalified subcontractors.

526 (i) Procedures shall be adopted by the commissioner of capital asset management and
527 maintenance to implement this section and to ensure that the condensed prequalification process
528 set forth in this section is sufficient, fair and consistent.

529 **INCREASE INCENTIVE PAYMENTS TO CONSTRUCTION MANAGEMENT AT**
530 **RISK FIRMS IN SPECIAL CIRCUMSTANCES**

531 SECTION 22. Notwithstanding section 7 of chapter 149A of the General Laws, as appearing in
532 the 2006 Official Edition, under special circumstances, when unique project requirements and
533 circumstances warrant, public agencies may include an additional incentive clause with the
534 contract providing for payment of an increased incentive of up to an additional 1/2 of 1 per cent;
535 provided however, that even under special circumstances the total incentive payments to the
536 construction management at risk firm can not exceed 1 and 1/2 per cent of the estimated
537 construction cost; provided further that the only contracts eligible for such additional incentive
538 payments shall be contracts that are funded in whole or in part through the American Recovery
539 and Reinvestment Act of 2009.

Senate, No. 2047

540 **A+B BIDDING**

541 SECTION 23. Notwithstanding the first sentence of section 39M(a) of chapter 30, any
542 transportation or public works projects subject to award under section 39M of chapter 30 by any
543 department, agency or authority of the commonwealth of Massachusetts that are funded in whole
544 or in part through the American Recovery and Reinvestment Act and are expected to interfere
545 with the movement of traffic and/or the travelling public may, in the discretion of the awarding
546 authority, be procured through a bidding method that awards the project to the responsible and
547 eligible bidder with the lowest bid value after taking into account the amount of time that the
548 bidder has identified in the bid for completion of the project, hereinafter identified as cost-plus-
549 time bidding; provided, however, that such awarding authority may reject any and all bids if it is
550 in the public interest to do so.

551 In utilizing a cost-plus-time bidding procurement method, the awarding authority shall use a cost
552 parameter (A) and a time parameter (B) to determine a bid value. The cost component (A) shall
553 be the traditional bid for the contract items and is the dollar amount for the work to be performed
554 under the contract. The time component (B) shall be the total number of calendar days required
555 to complete the project, as estimated by the bidder, multiplied by an agency-determined daily
556 road user cost (RUC) to translate time into dollars. The total bid value, which shall be clearly
557 detailed in the bid documents, shall equal the A + B (RUC). The total bid value shall be used
558 only to evaluate bids. The winning bid, which shall be calculated at a public bid opening at a
559 time and location designated in the bid documents, shall be the lowest bid value submitted by a
560 responsible and eligible bidder. The contract amount for payment purposes shall be based on the
561 bid price (A), not the total bid value. The number of days bid (B) shall become the contract time.
562 For purposes of this section, the term “responsible and eligible bidder” shall be defined pursuant

Senate, No. 2047

to the criteria contained in paragraph (c) of section 39M of chapter 30 of the General Laws, as amended by section 11 of chapter 303 of the Acts of 2008; provided, however, that the concept of “lowest” has been replaced by “lowest bid value,” as defined in this section.

The provisions of the general laws generally applicable to public works projects, including, but not limited to, sections 26, 27, 27A, 27B, 27C, 27D, 27F and 34A of chapter 149 and 39F, 39G, 39H, 39J, 39K, 39M (except the first sentence of 39M(a)), 39N, 39O, 39P and 39R of chapter 30, shall apply to all public works projects using the cost-plus-time bidding procurement method provided in this section.

ALLOW THE MASSACHUSETTS WATER POLLUTION ABATEMENT TRUST BOARD TO SET LOAN TERMS TO COMPLY WITH FEDERAL LAW

SECTION 25. Notwithstanding any general or special law to the contrary, the Massachusetts water pollution abatement trust may establish such terms and conditions for any loan or other form of financial assistance made under the provisions of chapter 29C of the General Laws that is funded in whole or in part by amounts provided under the American Recovery and Reinvestment Act of 2009 as the board of trustees of the trust shall determine to be in the best interests of the commonwealth and required to comply with federal law, including without limitation the interest rate, repayment period, number of payments to be made and amount of principal to be repaid on such loan or other form of financial assistance.

ALLOW TRANSFERABILITY BETWEEN THE CLEAN WATER AND DRINKING WATER PROGRAMS TO TAP ADDITIONAL RESOURCES FOR DRINKING WATER

SECTION 26. Notwithstanding any general or special law to the contrary, the Massachusetts water pollution abatement trust may transfer amounts held in the drinking water revolving fund

Senate, No. 2047

to the water pollution abatement revolving fund for application by the trust to the purposes specified in section 5 of chapter 29C of the General Laws, and may transfer amounts held in the water pollution abatement revolving fund to the drinking water revolving fund for application by the trust to the purposes specified in section 18 of chapter 29C, in each case to the extent authorized by the federal clean water act and the federal safe drinking water act.

COMPTROLLER MAY AUTHORIZE EXPENDITURES WHEN THERE IS A TIMING DISCREPANCY

SECTION 27. Notwithstanding any general or special law to the contrary, for the purpose of accommodating timing discrepancies between the receipt of revenues and related expenditures, a department may receive funds from the federal government related to the American Recovery and Reinvestment Act of 2009. The Comptroller may authorize encumbrances and expenditures by a department in anticipation of the department's receipt of the funds; provided that the department head certifies that accounts will not be in deficit at the end of a fiscal year. The Comptroller may establish accounts based on the provisions of section 6B of chapter 29 of the General Laws, including but not limited to a federal award notification and notification to the joint committee on veterans and federal affairs.

MATCHING FUNDS

SECTION 28. Notwithstanding any general or special law to the contrary, should a matching funds requirement exist with respect to the receipt of any funds from the federal government related to the American Recovery and Reinvestment Act of 2009, the department that is applying for such funds shall notify the secretary of administration and finance of the matching fund requirement. The secretary of administration and finance shall direct the comptroller to establish

Senate, No. 2047

matching accounts and to allow expenditure of funds in the accounts without further appropriation. The secretary of administration and finance shall also notify the joint committee on veterans and federal affairs and the ways and means committees of such action. The accounts shall be established in the federal grants fund as established by Chapter 29, section 2C, the federal highway construction program fund as established by Chapter 29, Section 2E or any other fund as the comptroller deems necessary to fulfill the terms and conditions of the American Recovery and Reinvestment Act of 2009.

POOL ADMINISTRATIVE COSTS

SECTION 29. Notwithstanding any general or special law to the contrary, the secretary of administration and finance may authorize accounts to receive federal funds from the American Recovery and Reinvestment Act of 2009. To the extent allowed by federal law, the secretary of administration and finance may transfer said funds to other “central service” agencies charged with implementation of the act and incur expenditures for charges related to the administrative costs of the act and to ensure that the commonwealth meets the efficient administration and statewide accountability requirements in the act. Notwithstanding any general or special law to the contrary, for the purpose of accommodating timing discrepancies between the receipt of revenues and related expenditures, the secretary of administration and finance may incur expenses and the comptroller shall certify for payments amounts not to exceed the lesser of one half of the authorization or the most recent revenue estimate therefore, or as otherwise authorized by the secretary of administration and finance. The accounts may receive federal funds recovered from the American Recovery and Reinvestment Act of 2009 in accordance with section 6B of chapter 29 of the General Laws or other state law. The recoveries shall be based on rates approved in accordance with the federal office of management and budget circular A-87

Senate, No. 2047

or any other guidance issued by the office of management and budget applicable to federal funds provided under the American Recovery and Reinvestment Act of 2009.

SPECIAL TRANSFER FOR UNEMPLOYMENT INSURANCE

SECTION 30. Section 53A of chapter 151A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding after the second paragraph the following new paragraph:- Notwithstanding any of the foregoing provisions of this section, moneys credited with respect to the special transfer made under section 903(g) of the Social Security Act shall be used solely for the purposes specified in such section and shall not be subject to appropriation.

REQUIREMENT TO USE APPRENTICES FOR 20% OF THE WORK PERFORMED ON CONSTRUCTION PROJECTS OVER \$1 MILLION

SECTION 31. a) Notwithstanding the provisions of any general or special law to the contrary, the following requirements shall apply to any public works project funded by the American Recovery and Reinvestment Act of 2009 where the amount of construction costs under any contract awarded is likely to exceed \$1 million. For the purposes of this section, the term “public works” shall have the following meaning: building or work the construction, as defined in G.L. c. 149, § 27D, of which is carried on by authority of the commonwealth, or by a county, town, authority or district, or with funds of a federal agency or the commonwealth, or a county, town, authority or district, to serve the interest of the general public, regardless of whether title thereof is in the commonwealth, or a county, town, authority or district.

(b) For any public works project subject to subsection (a), the specifications set forth in any request for responses shall include a requirement that, on a per project basis, no less than 20 per cent of the total hours of employees receiving an hourly wage who are directly employed on the

Senate, No. 2047

652 site of the project, employed by the contractor or any subcontractor, and subject to the prevailing
653 wage, shall be performed by apprentices in bona fide apprentice training programs as defined by
654 sections 11H & 11I of chapter 23 of the General Laws which are approved by the division of
655 apprentice training of the executive office of labor and workforce development.

656 (c) During the performance of any public works project subject to subsections (a) and (b), the
657 contractor shall submit periodic reports to the awarding authority with records indicating the
658 total hours worked by all journeymen and apprentices in positions subject to the apprentice
659 requirement. In any instance in which the apprentice hours do not constitute 20 per cent of the
660 total hours of employees subject to the apprentice requirement, the contractor shall submit a plan
661 to the awarding authority describing how the contractor shall comply with the apprentice
662 requirement.

663 (d) An awarding authority may adjust the requirements set forth in subsections (a), (b), and (c)
664 if, despite a good faith effort, and due to unavoidable circumstances, such as a demonstrated lack
665 of apprentices in a specific geographic area, compliance with these requirements is not feasible
666 or if application of the requirement would be preempted by federal law.

667 (e) An awarding authority serving a low-income population may require additional
668 specifications that address the needs of its clients, such as preferential hiring for residents of
669 public housing authorities for available apprenticeship positions.

670 (f) Subject to appropriation, the division of apprentice training shall enhance its outreach efforts
671 to underserved populations in order to increase and diversify the number of apprentices in the
672 commonwealth.

Senate, No. 2047

673 **TRAINING FOR INDIVIDUALS RECEIVING UNEMPLOYMENT COMPENSATION**
674 **BENEFITS**

675 SECTION 32. Subsection (c) of section 30 of chapter 151A, as appearing in the 2006 Official
676 Edition, is hereby amended by striking out, in line 29, the word “commissioner” and inserting in
677 place thereof the following words: director of the department of workforce development.

678 SECTION 33. Said subsection (c) is hereby further amended by striking out in line 32 the
679 number “eighteen” and inserting in place thereof the following number:- 26.

680 SECTION 34. Said subsection (c) is hereby further amended by striking out, in lines 34, 41, 42,
681 47, and 48, the word “commissioner” and inserting in place thereof the following word:-
682 director.

683 SECTION 35. Said subsection (c) is hereby further amended by striking out, in lines 43 to 45,
684 the words “because of the individual’s need to address the physical, psychological and legal
685 affects of domestic violence” and inserting in place thereof the following words:- , provided
686 that such circumstances shall include an individual’s need to address the physical, psychological
687 and legal effects of domestic violence, as well as any period in which economic circumstances
688 permit the provision of extended benefits or any other emergency benefits funded in whole or in
689 part by the federal government.

690 SECTION 36. Said subsection (c) is hereby further amended by inserting after the word
691 “claim”, in line 64, the following words:- unless the period is tolled by regulation.

692 **EMPLOYEES HIRED TO WORK ON ARRA PROJECTS WILL BE FUNDED BY**
693 **ARRA**

Senate, No. 2047

694 SECTION 37. Notwithstanding any general or special law to the contrary, employees who are
695 hired to perform work related to the American Recovery and Reinvestment Act of 2009 funded
696 by the federal government shall be scheduled in accounts set up solely for the purpose of the
697 American Recovery and Reinvestment Act of 2009. No expenditures of any employee scheduled
698 in any item of appropriation established by the act shall be charged to any other item of
699 appropriation and no expenditures of employees in any other item of appropriation shall be
700 charged to any account under the act and the comptroller shall not permit the transfers or charges
701 unless otherwise approved by the secretary for administration and finance. Positions funded by
702 the American Recovery and Reinvestment Act of 2009 shall be eliminated once the funding
703 ends.

704 **EMPLOYEES HIRED AND PAID FROM ARRA FUNDS ARE NOT SUBJECT TO**
705 **CIVIL SERVICE**

706 SECTION 38. Notwithstanding any general or special law to the contrary, any employee hired
707 by the commonwealth and paid from federal funds provided pursuant to the American Recovery
708 and Reinvestment Act of 2009, shall not be subject to the provisions of chapters 30 and 31 of the
709 General Laws.

710 **PROVIDING TECHNICAL ASSISTANCE AND CAPACITY BUILDING PILOT**
711 **PROGRAM**

712 SECTION 39. (a) As used in this section, the following terms shall, unless the context indicates
713 otherwise, have the following meaning: -

714 “Disadvantaged business enterprise” shall have the same meaning as the term is defined in 49
715 CFR part 26.

Senate, No. 2047

716 “Minority business enterprise” shall have the same meaning as the term is defined in section 40
717 of chapter 23A of the General Laws.

718 “Women business enterprise” shall have the same meaning as the term is defined in section 40 of
719 chapter 23A of the General Laws.

720 (b) Notwithstanding any general or special law to the contrary, the secretary of administration
721 and finance is hereby authorized to implement a technical assistance and capacity building pilot
722 program, applicable solely to projects funded in whole or in part by the American Recovery and
723 Reinvestment Act of 2009. The purpose of the technical assistance and capacity building
724 program shall be to promote, encourage and otherwise facilitate full participation of minority
725 business enterprises and women business enterprises, disadvantaged business enterprises, and
726 other small businesses in public construction and public works projects undertaken as part of the
727 federal economic recovery effort and funded in whole or in part by the American Recovery and
728 Reinvestment Act of 2009.

729 (c) The secretary shall promulgate rules, regulations or guidelines relative to the implementation
730 and administration of the technical assistance and capacity building pilot program.

731 (d) Not later than 6 months upon the conclusion of the provision of technical assistance and
732 capacity building services provided pursuant to subsection (b), the secretary or her designee shall
733 provide a written report to the governor on the provision of the services and performance
734 outcomes relative thereto. The report shall also include a recommendation or recommendations
735 as to how the commonwealth may best facilitate the continued inclusion of minority business
736 enterprises and women business enterprises, disadvantaged business enterprises and small
737 businesses in future public construction and public works projects.

Senate, No. 2047

738 ESTABLISHING A SURETY BOND GUARANTEE PROGRAM

739 SECTION 40. (a) Notwithstanding any general or special law to the contrary and solely for
740 purposes of implementing public building and public works projects funded in whole or in part
741 by the American Recovery and Reinvestment Act of 2009 while facilitating the involvement of
742 small contractors, including minority contractors and women contractors, the Massachusetts
743 community development finance corporation, hereinafter the “corporation,” is hereby authorized
744 to establish a contractor surety bond guarantee program pursuant to this section.

745 (b) As used in this section the following words shall, unless the context requires otherwise, have
746 the following meanings:-

747 “Bid bond”, a bond conditioned upon the bidder on a contract entering into the contract, if he
748 receives the award thereof, and furnishing the prescribed payment bond and performance bond.

749 “Eligible contractor”, (a) a small contractor, (b) a minority contractor, or (c) a women contractor.

750 “Minority contractor”, a person who performs as a prime contractor or general contractor or as a
751 subcontractor on a contract funded in whole or in part by the American Recovery and
752 Reinvestment Act of 2009 and is a minority business enterprise as such term is defined in section
753 40 of chapter 23A of the General Laws.

754 “Obligee”, (a) in the case of a bid bond, the public agency requesting bids for the performance of
755 a contract, or (b) in the case of a payment bond or performance bond, the public agency who has
756 contracted with a principal for the completion of the contract and to whom the obligation of the
757 surety runs in the event of a breach by the principal of the conditions of a payment bond or
758 performance bond.

Senate, No. 2047

759 “Payment bond”, a bond conditioned upon the payment by the principal of money to persons
760 under contract with him.

761 “Performance bond”, a bond conditioned upon the completion by the principal of a contract in
762 accordance with its terms.

763 “Person”, any natural person, business, partnership, corporation or other legal form.

764 “Prime contractor” or “general contractor”, the person with whom the obligee has contracted to
765 perform a contract funded in whole or in part by the American Recovery and Reinvestment Act
766 of 2009.

767 “Principal”, (a) in the case of a bid bond, a person bidding for the award of a contract, or (b) the
768 person primarily liable to complete a contract for the obligee, or to make payments to other
769 persons in respect of such contract, and for whose performance of his obligation the surety is
770 bound under the terms of a payment or performance bond. A principal may be a prime contractor
771 or a general contractor or a subcontractor.

772 “Small contractor”, a person who performs as a prime contractor or general contractor or as a
773 subcontractor on a contract funded in whole or in part by the American Recovery and
774 Reinvestment Act of 2009 and whose average annual gross revenue is five million dollars or less
775 per year for the most recent two fiscal years.

776 “Surety”, a surety company licensed to do business in the commonwealth and whose name
777 appears on United States Treasury Department Circular 570 and who (a) under the terms of a bid
778 bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the
779 conditions of the bond, (b) under the terms of a performance bond, undertakes to incur the cost

Senate, No. 2047

780 of fulfilling the terms of a contract in the event the principal breaches the conditions of the
781 contract, (c) under the terms of a payment bond, undertakes to make payment to all persons
782 supplying labor and material in the prosecution of the work provided for in the contract if the
783 principal fails to make prompt payment, or (d) is an agent, independent agent, underwriter, or
784 any other company or individual empowered to act on behalf of such company.

785 “Subcontractor”, a person who has contracted with a prime contractor or general contractor or
786 with another subcontractor to perform a contract funded in whole or in part by the American
787 Recovery and Reinvestment Act of 2009.

788 “Women contractor”, a person who performs as a prime contractor or general contractor or as a
789 subcontractor on a contract funded in whole or in part by the American Recovery and
790 Reinvestment Act of 2009 and is a women business enterprise as such term is defined in section
791 40 of chapter 23A of the General Laws.

792 (c) Pursuant to this section, the corporation is hereby authorized to establish a contractor surety
793 bond guarantee program and may, upon such terms and conditions as it may prescribe, guarantee
794 and enter into commitments to guarantee any surety against loss resulting from a breach of the
795 terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal
796 on any total work order or contract amount at the time of bond execution that does not exceed
797 \$250,000. No such guarantee may be issued, unless:

798 the person who would be principal under the bond is an eligible contractor;

799 the bond is required in order for such person to bid on a contract, or to serve as a prime
800 contractor or general contractor or as subcontractor on a contract;

Senate, No. 2047

801 such person is not able to obtain such bond on reasonable terms and conditions without a
802 guarantee under this section; and

803 there is a reasonable expectation that such principal will perform the covenants and conditions of
804 the contract with respect to which such bond is required, and the terms and conditions of such
805 bond are reasonable in the light of the risks involved and the extent of the surety's participation.

806 The corporation shall administer the contractor surety bond guarantee program on a prudent and
807 economically justifiable basis and establish such fee or fees for eligible contractors and premium
808 or premiums for sureties as it deems reasonable and necessary, to be payable at such time and
809 under such conditions as may be determined by the corporation.

810 The corporation, as guarantor, may exercise all the rights and powers of a company authorized
811 by the division of insurance to guarantee bonds pursuant to chapter 175 of the General Laws, but
812 is otherwise not subject to any laws related to a guaranty company under said chapter 175 nor to
813 any rules of the division of insurance.

814 (d) For purposes of this section, the corporation shall establish and maintain an account or
815 accounts, identified individually or collectively as the contractor surety bond guarantee fund,
816 kept separate from other corporate funds. The contractor surety bond guarantee fund shall
817 consist of all monies deposited credited or otherwise obtained pursuant to any appropriation or
818 other allocation or assignment or grant of funds from the commonwealth; any grants, gifts, and
819 contributions received pursuant to section 3 of chapter 40F of the General Laws; all monies
820 recovered following defaults; and any interest earned on monies within the account or accounts.

821 (e) The corporation is hereby authorized to guarantee up to 90 per cent of the loss incurred and
822 paid by a surety on bonds guaranteed under this section. Additionally, subject to the provisions

Senate, No. 2047

of this section, in connection with the issuance by the corporation of a guarantee to a surety as provided by subsection (c), the corporation may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the corporation pursuant to subsection (c); provided, however that prior to making any payment under this subsection, the corporation shall first determine that a breach of the terms of such bond was imminent and the surety must obtain written approval from the corporation prior to making any payments pursuant to this subsection.

(f) Pursuant to any such guarantee, the corporation shall reimburse the surety, as provided in subsection (e), except that the corporation shall be relieved of all liability if:

the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

the total contract amount at the time of execution of the bond or bonds exceeds \$250,000, or

the surety has breached a material term or condition of such guarantee in the agreement.

REPORTING REQUIREMENT

SECTION 41. Any entity located in Massachusetts that receives federal funds through the American Recovery and Reinvestment Act of 2009 shall provide information as directed by the secretary of administration and finance regarding the use of the funds. The required information shall include but not be limited to the reporting information required by the federal government, and shall include any other information deemed necessary by the secretary to administer the American Recovery and Reinvestment Act of 2009 responsibly, efficiently and transparently. To the extent possible, the secretary shall work to streamline the reporting of this information,

Senate, No. 2047

844 minimize duplication of data entry by recipients and ensure data consistency. The secretary of
845 administration and finance may issue regulations to effectuate this reporting requirement.

846 SECTION 42. Employers and hiring agents on all projects funded in whole or in part by the
847 American Recovery and Reinvestment Act of 2009 shall post notices of available employment
848 opportunities to the commonwealth's job bank or the one-stop career centers closest to where the
849 projects are located. The postings will contain such information as directed by the secretary of
850 labor and workforce development. The secretary may issue regulations to effectuate this job
851 posting requirement.

852 SECTION 43. Sections 1 to 24 and section 31 shall apply only to contracts advertised after the
853 effective date of this act.